

## INITIAL STATEMENT OF REASONS

February 11, 2003

Under existing law the Administrator for oil spill response is authorized to collect a fee sufficient to carry out the purposes of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act, see Government Code Sections 8574.1 through 8670.72, and Public Resources Code Sections 8750 through 8760). The fee, established in statute at up to 4¢ per barrel, is applied to oil and petroleum products entering the State through, across or in State marine waters.

SB 849 (Chapter 514, Statutes of 2002) authorized a 1¢ increase to the maximum fee that can be charged by OSPR on each barrel of oil and petroleum products entering California over or through State marine waters. The one-penny increase will help OSPR solidify and move forward with administrative programs which had been negatively impacted by previous budget adjustments. The fee increase of 1¢ per barrel is estimated to increase OSPR's average annual revenue by \$4.75 million.

Since the OSPR coastwide program was enacted in 1990, increased mandates have been imposed requiring a dedication of increased resources; however, revenues have remained relatively constant. Currently revenues are insufficient to support the existing coastwide program. Although there has been some fluctuation from year to year, annual revenues have averaged approximately \$18.5 million, while coastwide program costs have averaged approximately \$22.5 million. Reserves from early program years have funded the difference; however, in FY 1999/00, authorized expenditures had to be reduced by \$1.9 million to bring expenditures closer in line with anticipated revenues. As a result of these reductions, a number of activities continue to operate with insufficient funds. In addition, due to fund conditions other program have never been implemented including a wildlife operations planning program, a marine spill restoration and remediation program, an oil transfer and monitoring program, Environmental Impact Report and supplemental comment preparation, an expanded drills and exercises program, and salvage capability verification. Without the additional funding that the 1¢ per barrel increase will provide, fund reserves are projected to be exhausted in FY 2003/04. (See *Fund 320 Chart Data*).

As SB 849 provides in Government Code Section 8670.40(a): "The State Board of Equalization shall collect a fee in an amount determined by the Administrator to be sufficient to carry out the purposes set forth in Subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents (\$0.05) per barrel of crude oil or petroleum products." The Administrator has determined that the five cents (\$0.05) per barrel assessment, which will generate approximate annual revenues of \$4.75 million, is necessary to carry out the purposes set forth in the Lempert-Keene-Seastrand Oil spill Prevention and Response Act. Setting the fee at five cents (\$0.05) per barrel will also provide for a reasonable reserve for possible contingencies.

Government Code Section 8670.41, as provided in SB 849, states: "The Administrator shall charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the Administrator's costs in implementing this chapter relating to nontank vessels. Before January 1, 2005, the fee shall be ...\$2,500, or less". The legislation also allows the fee to be reduced for nontank vessels which pose a reduced risk of pollution.

Oil spills from nontank vessels pose a serious threat to California's marine environment and nontank vessels constitute a significant portion of the OSPR's workload. Several significant spills in recent years were from nontank vessels including the *M/V Stuyvesant* and *M/V Kure* spills in Humboldt Bay.

Recent statutory mandates (SB 1644, Chapter 964, Statutes of 1998) require OSPR to review nontank vessel oil spill contingency plans and provide a certificate of financial responsibility (COFR) for nontank vessels. Nontank vessels are also covered by OSPR's drills and exercises program. Implementation of these programs has exceeded expected costs, particularly considering that there has never been a funding mechanism for the nontank vessel mandates (the previous \$100 fee every two years only covered COFR application processing). In addition, to fully implement a comprehensive nontank vessel program, a number of program elements must be added including field support and monitoring, a program of spill response drills and exercises, and an accounting element to track and audit receipts.

The proposed fee for nontank vessels could increase OSPR's average annual revenues by as much as \$3 million (approximately 1,200 nontank vessels X \$2,500). OSPR believes that the \$3 million approximates OSPR's costs to fully implement a comprehensive nontank vessel program. OSPR personnel do not specifically record their work hours to tank vessel or nontank vessel activities. This \$3 million approximation was based on a survey of each activity within OSPR and an estimate of the percentage of time and costs for each nontank vessel activity including associated administrative and support costs (See *Nontank Cost to OSPR*). Factoring in projections of costs for program elements currently not able to be performed (e.g., field support and monitoring, drills and exercises, accounting and auditing, etc.) would bring the total costs for a comprehensive nontank vessel program above \$3 million.

SB 849 (Chapter 514, Statutes of 2002) also allows the nontank vessel fee to be reduced for nontank vessels which pose a reduced risk of pollution. The proposed regulations contain such a provision, based on the oil carrying capacity of the nontank vessel. 500 barrels was chosen as a threshold level because a number of nontank vessels "...used for research or training and vessels that are moored or permanently or rarely move..." (as stated in Government Code Section 8670.41(b)) have an oil capacity of 500 barrels or less. The thresholds of 501 barrels to 6,500 barrels or 7,500 barrels as defined, reflect levels in current regulations (CCR Section 791.7(d)(1)(C)) that define the oil carrying capacity levels used to establish lower COFR amounts for smaller nontank vessels. The distinction between the 6,500 barrel limit and the 7,500 barrel limit was originally identified in statute (Government Code Section 8670.37.58(b)) which authorized lower COFR amounts. It was recognized by the legislature that the confidence level in nontank vessels owned and operated by a California or federal agency in regard to maintenance, upkeep, and compliance with state and federal requirements was high, and therefore a higher barrel threshold would be allowed. The 7,500 barrel level also captured many of the government-owned research vessels. Barrel capacity can relate to risk and impact of an oil spill (i.e., a smaller capacity of oil would be less complicated to transfer, store, clean-up, etc., and could potentially have less impact on the environment if spilled), and is a better means to identify "smaller" nontank vessels than vessel type or purpose. Technical staff estimates that nontank vessels carrying 500 barrels of oil or less have approximately 20% less risk of pollution, and nontank vessels with an oil carrying capacity of 6,500 or 7,500 barrels of oil or less have

approximately 60% less risk of pollution. Therefore, the commensurate fee for these nontank vessels is \$500 (\$2,500 X 20%) and \$1,500 (\$2,500 X 60%), respectively.

In summary, this regulatory action is necessary to:

1. Implement a 1¢ increase, from 4 cents to 5 cents, to the maximum fee that can be charged by OSPR on each barrel of oil and petroleum products entering California over or through State marine waters.
2. Implement a \$2,500 fee to be paid by nontank vessel owner/operators every two years, to coincide with their COFR application submittal.
3. Develop reduced fees for “smaller” nontank vessels as described.
4. Make corresponding changes to the COFR Application for Nontank Vessels (FG OSPR-1972(1/03)).

Amendments have already been implemented through an Emergency Regulation (OAL File # 02-1113-01 ER) that went into effect on January 1, 2003 (the effective date of the enabling legislation) to increase funding to enable OSPR to carry out currently unfunded mandates, enhance OSPR’s very successful unannounced drill program and provide for a prudent reserve for the Oil Spill Prevention and Administration Fund. This is a follow-up rulemaking to that Emergency Regulation. The increased funding will also enable the State Lands Commission to continue its successful engineering audit program of offshore facilities, which has its funding expire at the end of this fiscal year. Without an increase in revenue, coastwide program reductions will be required, statutory obligations will not be met, and potential damage to the environment may result. The funding shortfall would also negatively impact the State Lands Commission, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, and the Board of Equalization. Given additional funding, OSPR’s intention would be to use \$3.225 million to balance revenue with expenditures and maintain a prudent reserve; \$3.4 million to restore and improve OSPR operations; and \$1 million would be made available for other State agencies.

#### AUTHORITY AND REFERENCE

Government Code Section 8670.39(b) grants the Administrator the authority to adopt regulations to implement Article 6, which establishes the Oil Spill Prevention and Administration Fund. Government Code Section 8670.37.54(b) grants the Administrator the authority to adopt regulations governing policy or other contractual terms, conditions or defenses which are necessary or which are unacceptable in establishing evidence of financial responsibility. As amended by SB 849 (Chapter 514, Statutes of 2002): Government Code Section 8670.40(a) raises the maximum fee that could be charged by OSPR on each barrel of oil and petroleum products entering California over or through State marine waters by 1 cent per barrel, from 4 cents to 5 cents; Government Code Section 8670.41(a) authorizes the Administrator to charge up to \$2,500, to be collected with each nontank vessel Certificate of Financial Responsibility

application, and; Government Code Section 8670.41(b) allows for a reduced fee for nontank vessels which pose a reduced risk of pollution. Therefore, these amended regulations implement, interpret, and make specific Government Code Sections 8670.37.54, 8670.39, 8670.40, and 8670.41.

## INFORMATIVE DIGEST

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act created a comprehensive state oil spill program for marine waters. The law expanded the authority, responsibilities and duties of the Department of Fish and Game under the direction of the Administrator of the Office of Spill Prevention and Response (OSPR). Government Code Section 8670.6 provides authority for the establishment of the OSPR which contains staff to assist the Administrator in performing the duties specified in the Act. Currently, there are regulations established which govern Certificates of Financial Responsibility and the Oil Spill Prevention and Administration Fund Fee. This regulatory action amends those regulations.

The specific purpose for each amendment is set forth below:

### Subchapter 1. Certificates of Financial Responsibility

Authority and reference citations have been updated throughout this subchapter.

Section 791.7(a) (2) has been amended to reflect the new revision date to the updated form FG OSPR-1972 (1/03).

Section 791.7(c)(5) has been amended to list the nontank vessel fees, which includes a split fee based on the oil carrying capacity of the nontank vessel. Reference to the \$100 “application fee” has been removed as this new fee is based upon the Administrator’s costs in implementing the nontank vessel program, as stated in Government Code Section 8670.41(a). This subsection implements the provisions of Government Code Section 8670.41(b), which allows a reduced fee for nontank vessels that pose a reduced risk of pollution. Barrel capacity can relate to risk and impact of an oil spill (i.e., a smaller capacity of oil would be less complicated to transfer, store, clean-up, etc., and could potentially have less impact on the environment if spilled), and is a better means to identify “smaller” nontank vessels than vessel type or purpose. Nontank vessels with a smaller oil carrying capacity generally result in less cost to OSPR due to their simplified contingency plan review and less detailed documentation required in COFR verification. Therefore, reducing the per vessel fee (which is based on a reduced risk of pollution) for these types of vessels is also commensurate with reduced costs to OSPR for these nontank vessels.

Section 791.7(c)(8)(A) has been amended to remove an obsolete date reference, and to re-letter the rest of this subsection.

Section 791.7(d)(1)(B)(1) has been amended to repeal the \$100 per vessel application fee. The new nontank vessel fee information is now included in Section 791.7(c)(5). This subsection has also been re-numbered.

Section 791.7(d)(1)(C)(7) has been amended to repeal the requirement for the \$100 per vessel application fee. The new nontank vessel fee information is now included in Section 791.7(c)(5). This subsection has also been re-numbered.

[New] Section 791.7(d) (2) has been amended to add the Government Code citation that authorizes the nontank vessel fee amount.

[New] Section 791.7(d)(3)(A) has been amended for clarity by referencing the subsection that describes the 10 day period mentioned in subsection(d)(3)(A).

Subsection 791.7(f)(1) contains technical/grammatical amendments without regulatory affect.

Section 791.7(f)(3) has been amended to cross-reference Subsection 791.7(c)(5) which describes the new nontank vessel fee. Reference to the \$100 “application fee” has been removed as the new fee is based upon the Administrator’s costs in implementing the nontank vessel program, as stated in Government Code Section 8670.41(a).

## Subchapter 2. Oil Spill prevention and Administration Fund Fee.

Authority and reference citations have been updated throughout this subchapter.

Section 870.15(b) has been amended to incorporate nontank vessel “fees” that are now imposed as authorized by Government Code Section 8670.41. Also, “assessed” has been changed to “impose”. “Assessed” implies a fee that is billed, but “impose” more accurately reflects the statutory authority to set the per barrel and nontank vessel fees.

Section 870.17 has been amended to increase the fee, from 4 cents to 5 cents, which can be charged by OSPR on each barrel of oil and petroleum products entering California over or through State marine waters. Language from CCR Section 791.7(c)(5) which describes the per vessel fee on nontank vessels, including the reduced fee for “smaller” nontank vessels as described, has been added here as a reference. Also, language has been added to make clear that processing fees (i.e., wire transfer fees, etc.) are not to be deducted from the per nontank vessel fee, which is consistent with requirements in the Certificate of Financial Responsibility regulations (Section 791.7(c)(5), among others). This section has also been reformatted for clarity.

Section 870.19 contains the following changes:

Amending the section title to distinguish this fee from the nontank vessel fee;

Increasing the 4 cents per barrel fee to 5 cents for each barrel of oil and petroleum products entering California over or through State marine waters;

Amending the date that the statutorily mandated revenue and expenditure assessment is due, from October 1 to January 20, which reflects the requirement in Government Code Section 8670.40(b)(3);

Amending the date that the per barrel fee is set to January 20, to align with the January 20 deadline to prepare the annual assessment.

Section 870.21 has been amended to clarify that only the 5 cents per barrel fee on oil transported by tank vessel or pipeline is to be collected by the Board of Equalization, but that both the per barrel fee and nontank vessel fee are to be deposited in the Oil Spill Prevention and Administration Fund (OSPAPF). Language has also been added (in new Subsection (h)) to include reimbursement to the State Lands Commission, as described in Government Code Section 8670.40(e)(8), in the list of purposes that are approved for funding from the OSPAPF. This subsection has been re-lettered, and subsection (f) has been added, to mirror the statutory language found in Government Code Section 8670.40(e).

Form FG OSPR-1972 (1/03) has been amended as follows:

Page 1 – has been amended by adding “E-mail address” information, which will facilitate contact with the owner/operator, especially international owner/operators, who can be difficult to reach by telephone due to time-zone differences.

Page 3 has been amended to modify information that was for OSPR’s use only, and is a non-substantive, non-regulatory amendment.

Page 4 – Section B.5. has been amended to add “deck barge” as an example of a type of nontank vessel, which should give better guidance to industry in completing this section.

Page 5 – The notation “gt” has been amended to “GT”, which is the correct abbreviation for gross tons.

Page 8 – Section D. The Declaration has been amended to simplify and clarify the wording, without substantively altering its meaning or usage.

Page 9 & 10 – The instructions have been amended by including the requirement for a per nontank vessel fee. This reflects language added in regulation (Section 791.7(c)(5)) and implements the provisions of Government Code Sections 8670.41(a) and (b). Reference to the “application fee” of \$100 has been removed as the new fee is based upon the Administrator’s costs in implementing the nontank vessel program, as stated in Government Code Section 8670.41(a). The instructions have also been re-numbered.

#### DOCUMENTS RELIED UPON

Technical, theoretical or empirical studies or reports relied upon:

°None

#### BUSINESS IMPACT

The OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

#### SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments do not mandate the use of specific technologies or equipment.

#### CONSIDERATION OF ALTERNATIVES

No alternative which was considered by the OSPR would be more effective than or equally as

effective as and less burdensome to affected private persons than the proposed amended regulations

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11346.2(b)(6), 11346.5, and 11349(f)

The regulations, which implement vessel oil transfer requirements, do not conflict with Federal statutes or regulations.